
(2020) 06 UK CK 0040
In the Uttarakhand High Court
Case No : Special Appeal No. 89 Of 2020

M/s G.S. Flour Mill Barkheda Pandey	APPELLANT
Vs	
District Magistrate, Udham Singh Nagar And Others	RESPONDENT

Date of Decision : 24-06-2020

Acts Referred:

Securitisation And Reconstruction Of Financial Assets And Enforcement Of Securities Interest Act, 2002 — Section 13(2), 13(4), 14, 17, 17(1)
Allahabad High Court Rules 1952 — Rule 5

Citation : (2020) 06 UK CK 0040

Hon'ble Judges : Ramesh Ranganathan, CJ; Ramesh Chandra Khulbe, J

Bench : Division Bench

Advocate : Siddhartha Sah, Anil K. Bisht, Shubhang Dobhal

Final Decision : Dismissed

Judgement

Ramesh Ranganathan, CJ

1. Heard Mr. Siddhartha Sah, learned counsel for the appellant, Mr. Anil K. Bisht, learned Standing Counsel for the State and Mr. Shubhang Dobhal,

learned counsel for respondent nos.2 and 3.

2. This Special Appeal is preferred against the order passed by the learned Single Judge in Writ Petition (M/S) No.448 of 2020 dated 24.02.2020

relegating the appellant-writ petitioner to approach the Debt Recovery Tribunal under Section 17 of the Securitisation and Reconstruction of Financial

Assets and Enforcement of Securities Interest Act, 2002 (for short the "2002 Act").

3. Mr. Siddhartha Sah, learned counsel for the appellant-writ petitioner, would submit that the impugned order is not only in violation of principles of natural justice, but is also without jurisdiction; and the appellant-writ petitioner

cannot, therefore, be non-suited on the ground that there exists an alternative statutory remedy which they can avail.

4. Facts, to the limited extent necessary, are that, consequent on the appellant-writ petitioner's account with the respondent-Bank being declared

a non-performing asset, a notice under Section 13(2) of the 2002 Act was issued on 12.10.2018; this was followed by a possession notice being issued,

under Section 13(4) of the 2002 Act, on 01.01.2009. Thereafter, the appellant-writ petitioner claims to have deposited a sum of Rs.9.88 lakhs which

they contend had resulted on their account being regularized; consequently, for non-payment thereafter, a fresh notice under Section 13(2) of the Act

ought to have been issued; and, failure to do so, is a jurisdictional error on the part of the respondent-Bank.

5. Admittedly, the respondent-Bank has never intimated the appellant-writ petitioner that their account has been regularized. Where the account of a

borrower is declared a non-performing asset, the borrower is obligated to pay the entire amount due along with interest. Part payment, of less than

10% of the loan amount would not, in the absence of the Bank passing any order regularising the account of the borrower, be deemed that their loan

account has been regularized.

6. While reliance is placed on behalf of the appellant-writ petitioner on *Harshad Govardhan Sondagar vs. International Assets Reconstruction Co. Ltd:*

(2014) 6 SCC 1, to contend that, in the light of the finality attached to the order passed by the District Magistrate under Section 14 of the Act, the

appellant-writ petitioner cannot approach the Debt Recovery Tribunal under Section 17 of the 2002 Act, the fact remains that the Supreme Court had,

in *Kanaiyalal Lalchand Sachdev & others vs. State of Maharashtra & others:* (2011) 2 SCC 782, observed that action under Section 14 of the 2002

Act constituted an action taken after the stage of Section 13(4) and, therefore, the same would fall within the ambit of Section 17(1) of the Act; and

the Act itself contemplated an efficacious remedy for the borrower, or any person affected by an action under Section 13(4) of the Act, to approach

the DRT.

7. In *M/s Badesha Rice Mill & others vs. Uttarakhand Gramin Bank & others* (order in Special Appeal No.456 of 2019 dated 07.05.2019), a

Division Bench of this Court noted that the Supreme Court in *Harshad Govardhan*

Sondagar had not noticed its earlier judgment in Kanaiyalal

Lalchand and, consequently, the DRT did not lack jurisdiction to entertain a challenge to the proceedings under Section 13(4) of the 2002 Act,

followed by an order passed by the District Magistrate under Section 14 of the 2002 Act.

8. We are satisfied, therefore, that the DRT does not lack jurisdiction to examine the validity of the possession notice issued under Section 13(4) of the

2002 Act followed by an order of the District Magistrate under Section 14 of the 2002 Act.

9. As noted hereinabove, the learned Single Judge has not examined the appellant-writ petitioner's claims on merits, but has only relegated them to

approach the DRT. The appellant-writ petitioner's complaint of violation of principles of natural justice can also be agitated before the Tribunal in

proceedings under Section 17 of the 2002 Act.

10. The scope for interference in an intra-court appeal, under Chapter VIII Rule 5 of the Allahabad High Court Rules, is extremely limited. Save

cases where the order under appeal suffers from a patent illegality, no interference is called for. The order of the learned Single Judge, relegating the

appellant-writ petitioner to approach the DRT under Section 17 of the 2002 Act, does not suffer from any such infirmity.

11. We see no reason, therefore, to interfere with the order under appeal. Suffice it to hold that, in case the appellant-writ petitioner avails the remedy

under Section 17 of the 2002 Act, the DRT shall consider their contentions on merits without being influenced by any observations made either in the

order under appeal or in the order now passed by us.

12. Subject to the aforesaid observations, the Special Appeal fails and is, accordingly, dismissed. No costs.